

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS (FKA BANKERS TRUST  
COMPANY) and JP MORGAN CHASE  
BANK in their separate capacities and as  
agents for the pre- and post-petition Lender  
Defendants of Fleming Companies, Inc.;  
GENERAL ELECTRIC CAPITAL  
CORPORATION; C&S WHOLESALE  
GROCERS, INC.; THE POST-  
CONFIRMATION TRUST OF FLEMING  
COMPANIES, INC.; ROBERT KORS;  
CORE-MARK HOLDINGS INC. and DOES 1  
to 200,

Defendants.

Case No. 01:07 CV 7634 (WHP)

ECF Case

DEFENDANTS POST CONFIRMATION TRUST'S AND  
ROBERT KORS' NOTICE OF MOTION AND MOTION FOR  
SANCTIONS UNDER FEDERAL RULE OF CIVIL PROCEDURE 11

KIRKLAND & ELLIS LLP  
Richard L. Wynne (RW 5630)  
Michael E. Baumann (admitted *pro hac vice*)  
Erin N. Brady (admitted *pro hac vice*)  
F. Wade Ackerman (admitted *pro hac vice*)  
777 South Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500  
E-mail: ebrady@kirkland.com

Counsel for Defendants Post Confirmation Trust  
and Robert Kors

**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Points and Authorities and exhibits attached thereto, and as permitted by the Honorable William H. Pauley III, Judge of the United States District Court for the Southern District of New York, at the United States District Courthouse, located at 500 Pearl Street, Courtroom 11D, New York, New York 10007, Defendants POST CONFIRMATION TRUST and ROBERT KORS move for sanctions pursuant to Federal Rule of Civil Procedure 11.

**PLEASE TAKE FURTHER NOTICE** that, in accordance with Judge Pauley's instructions at the hearing held on Friday, April 4, 2008, opposing papers, if any, must be served on April 28, 2008. Defendants' reply must be served on May 5, 2008. Oral argument on Defendants' motion will be scheduled, if the Court deems it necessary, on a date to be determined by the Court upon receipt and review of the aforementioned papers.

Dated: April 7, 2008

/s/ Erin N. Brady  
KIRKLAND & ELLIS LLP  
Richard L. Wynne (RW 5630)  
Michael E. Baumann (admitted *pro hac vice*)  
Erin N. Brady (admitted *pro hac vice*)  
F. Wade Ackerman (admitted *pro hac vice*)  
777 South Figueroa Street  
Los Angeles, California 90017  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500  
E-mail: ebrady@kirkland.com

Counsel for Defendants Post Confirmation  
Trust and Robert Kors